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UNCLAS SECTION 01 OF 02 RANGOON 000209

SIPDIS

SENSITIVE

STATE FOR EAP/BCLTV, EB/IPE SWILSON  
STATE PASS USTR FOR JCHOE-GROVES, USPTO JURBAN, LOC STEPP  
COMMERCE FOR JBOGER, ITA JEAN KELLY  
TREASURY FOR OASIA  
USPACOM FOR FPA

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PGOV](#) [PREL](#) [BM](#)

SUBJECT: SPECIAL 301: BURMA'S IPR SITUATION WORTH WATCHING

REF: STATE 25660

**¶1.** (SBU) Summary: This cable is in response to reftel request. Intellectual Property Rights (IPR) are not adequately protected in Burma. There is insufficient legislative protection and basically no law enforcement attention to the problem. There are unverified rumors of unregulated optical media plants inside Burma, though output is likely small relative to production elsewhere in the region. Because the impact of Burmese piracy on U.S. exports is small, and the GOB claims it is on track to meet its TRIPs requirements in 2006 (with improved legislation and law enforcement), we think it is one or two years premature to put Burma on any formal or informal list of countries of serious IPR concern. However, it is not too early to raise our concerns with the GOB. End summary.

Background: Sanctions Limit U.S.-Burma Trade

**¶2.** (U) In May 1997, the United States imposed investment and other sanctions against Burma, including the suspension of commercial assistance programs. In July 2003, legislation barred the import of Burmese products into the United States and an executive order outlawed the export of U.S. financial services to Burma. U.S. commercial policy toward Burma is to neither encourage nor discourage legal exports. U.S. exports to Burma in 2004 were about \$11.6 million. Given this limited trade and economic relationship with Burma, Post does not submit National Trade Estimate reports.

IPR: Legislative Framework and Enforcement Weak

**¶3.** (U) Burma does not yet have adequate IPR protection. Patent, trademark, and copyright laws and regulations are all deficient. A Patents and Design Act was introduced in 1946, but never brought into force. Thus the Indian Patent and Designs Act of 1911, which was enacted under British colonial rule, continues to govern the registration of patents and designs. There are rumors that a comprehensive IPR law is in the works to make Burma compliant with its WTO TRIPs obligations in 2006 (Burma is designated a least-developed country for purposes of TRIPs compliance). After Burma joined ASEAN in 1997, it agreed to modernize its intellectual property laws in accordance with the ASEAN Framework Agreement on Intellectual Property Cooperation and subsequent 2004-2010 action plan. However, there has been little evident action in this direction.

**¶4.** (SBU) Lack of adequate legal protection, very poor understanding of IPR among consumers and policymakers, and a cash-strapped populace and business community spell trouble for IPR protection. Piracy of optical media (music and video CDs, CD-ROMS, and DVDs), books, software, and designs is evident nationwide -- especially in the Thai and Chinese border regions and in the two major urban centers of Rangoon and Mandalay. The vast majority of consumers of IT products, private and governmental, are using pirated software. Much of the pirated U.S.-origin optical media and software is imported from China and Thailand. There have been reliable reports in the past that unregulated optical media plants are operating inside Burma. However, we cannot verify this information, and output, if it exists, is likely small relative to regional production.

**¶5.** (U) Burma has no trademark law, though trademark registration is possible. Some firms place a trademark caution notice in the regime's official newspaper, declaring ownership. Once this notice has been published, criminal and/or civil action can be taken against trademark infringers. Title to a trademark depends on use of the trademark in connection with goods sold in Burma. While the Copyright Act was promulgated in 1914, no means to register a copyright was ever instituted. There is thus no legal protection in Burma for foreign copyrights.

**¶6.** (U) Burmese law enforcement officials do not prosecute

piracy of domestic or foreign IPR except incidentally when such activity breaks other laws. For instance, the existence of domestically pirated or illegally imported optical media and books, in particular, are of concern to Burma's military regime (the State Peace and Development Council or SPDC) because the material has not passed the GOB's censorship board. Recently authorities have been cracking down on vendors of unlicensed foreign CDs and DVDs, with the unintended consequence of punishing purveyors of pirated goods.

Comment: Is Burma Fit for the List?

17. (SBU) U.S. industry is correct in pointing out that Burma is at risk of becoming a serious IPR problem. Porous, remote, and, in some cases, relatively lawless border regions, combined with rampant corruption and active narcotics trafficking organizations inside Burma make the movement of optical piracy plants to Burma a real threat. Likewise, it is true that the GOB has yet to meet its TRIPs requirements or sign the WIPO Internet Treaties or other international accords. However, we note that the scale of the local problem is still very small compared to neighboring countries. Given a limited number of likely domestic customers (most Burmese are too poor) and a chronic lack of adequate infrastructure (e.g., reliable electricity) in most of the country, we do not believe Burmese consumption of domestically produced pirated products has a significant adverse impact on U.S. exports.

18. (SBU) (Comment, cont.) As Burma is not yet required to meet TRIPs requirements, we also think it may be too early to start officially critiquing a lax law enforcement response. Thus, we think it's one or two years premature to add Burma to any formal or informal listing of countries of IPR concern. Nonetheless, it is not too early to raise our concerns with the GOB over IPR violations in Burma. End comment.

Martinez